Supreme Court U.S.
FILED
DEC 27 2006
OFFICE OF THE CLERK

No. 06-897

IN THE
Supreme Court of the United States

KENNETH W. JOHNSON,
Petitioner,

v.

MARRION BARRY JR. MAYOR OF THE DISTRICT OF COLUMBIA, *et al.*,
Respondents.

On Petition For Writ Of Certiorari
To The District Of Columbia Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Kenneth W. Johnson
Pro se litigant of Record
9803 Allenford Circle, Apt. 203
North Potomac, Md. 20850
Telephone: (240) 314-7188

QUESTIONS PRESENTED FOR REVIEW:

1. Whether or not the decisions and holdings of the District of Columbia Court of Appeals regarding the issue of "fraud upon the court" are in [d]irect [c]onflict with the decisions and holdings of the Supreme Court of the United States regarding the issue of "fraud upon the court", as prescribed in *Hazel-Atlas Glass Co. v. Hartford-empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L. Ed. 1250, where federal rights are concerned?
2. Whether or not Kenneth W. Johnson's noncompliance with TITLE 12 District of Columbia Code § 309 can bar his federal claims?
3. Kenneth W. Johnson was arrested, jailed, and prosecuted for operating his business without probable cause; his business was forcibly closed down, all his income from his business was stopped, his business was irrevocably ruined as the result of the policies of the District of Columbia that were affected upon Johnson by the District's police officers: The main proposition advanced by Kenneth Johnson is that his enjoyment upon the terms of equality with all others in similar circumstances of the privilege of owning and operating a business, pursuing an ordinary calling or trade, and of acquiring, holding and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment *Powel v. Pennsylvania*, 127 U.S. 678, 684, and that Johnson was deprived of these federal rights by the District of Columbia and its police officers *Wyatt v. Cole,* 112 S.Ct. 1827, 118 L. Ed. 504: Accordingly, do Johnson's allegations constitute a deprivation of his federally guaranteed rights protected by the 14th Amendment?
4. Was the failure to granted Johnson leave to amend the Complaint, after the Complaint had been dismissed, to assert a right of recovery under 42 U.S.C § 1983 in conflict with *Foman v. Davis*, 371 U.S. 178, **182**?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the District of Columbia Court of Appeals.

The petitioner here and appellant below is Kenneth W. Johnson.

The respondent here and appellees below are Marrion Barry Jr. Mayor of the District of Columbia, Corporation Council of the District of Columbia, and the District of Columbia generally.

CORPORATE DISCLOSURE STATEMENT

Kenneth W. Johnson is a person, an individual, a human being, and not a corporation. There is no parent or publicly held company owning 10% or more of the corporation's stock, a statement to that effect shall be included on this page. Rule 29.6

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

PARTIES TO THE PROCEEDINGS.....ii

CORPORATION DISCLOSURE STATEMENT.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....iv-viii

SUPREME COURT RULE 14(d)
CITATIONS OF THE OFFICIAL AND
UNOFFICIAL REPORTS OF THE
OPINIONS AND ORDERS ENTERED
IN THE CASE BY COURTS 1

A CONCISE STATEMENT OF THE BASIS
FOR JURISDICTION IN THIS COURT.....2

THE CONSTITUTIONAL PROVISIONS, TREATIES,
STATUTES, ORDINANCES, AND REGULATIONS
INVOVLED IN THE CASE.....2-6

STATEMENT OF THE CASE.....7-14

DIRECT AND CONCISE ARGUMENT
AMPLIFYING THE REASONS RELIED
ON FOR ALLOWANCE OF THE WRIT.....15-30

CONCLUSION.....30

TABLE OF AUTHORITIES

FEDERAL CASES

PAGES

Brown v. United States, 239 U.S.App.D.C.345, 356-357..... 29

Covad Communications CO. v. Bell Atlantic Corp. 398 F.3d 666, 670 (D.C. Cir. 2005).....15

Dausel v. Dausel, C.A.D.C.1952, 195 F.2d 774.....15, 24

Demjanjuk v. Petrovosky 10 F.3d 338 at 352 6th Cir 1993).....15, 18, 20, 21, 22

Foman v. Davis, 83 S.Ct. 227, 371 U.S. 178, 182, 9 L.Ed.2d 222.....i, 30

Hazel-Atlas Glass Co. v. Hartford-empire Co. 322 U.S. 238, 64 S.Ct. 997, 88 L. Ed. 1250 (1944).....i, 15, 17, 18, 20, 22, 23, 24, 26-27

Kenner v. Commissioner of Internal Revenue, C.A. 7th 1968, 387 F.2d 689, 691, certiorari denied 89 S.Ct. 121, 393 U.S. 841, 21 L.Ed.2d 112.....24

Lockwood v. Bowles, D.C.D.C. 1969, 46 F.R.D. 623, 634.....15, 23

Powel v. Pennsylvania, 127 U.S. 678, 684.....i, 16

Serzysko v. Chase Manhattan Bank, C.A.2d, 1972, 461 F.2d 699, certiorari denied 93 S.Ct. 173, 409 U.S. 883, 34 L.Ed.2d 139.....15, 22, 23

U.S. v. Throckmorton, 98 U.S. 61, 25 L.Ed. 93 (1878).....22

Valerio v. Boise Cascade Corp., D.C. Cal. 1978, 80 F.R.D. 626, 640, citing Wright & Miller, affirmed C.A. 9th, 1981, 645 F.2d 669, certiori denied 102 S.Ct. 976, 454 U.S. 1126, 71 L.Ed.2d 113.....15, 24

Wilkin v. Sunbeam Corp., C.A. 10th , 1968, 405 F.2d 165.....15, 24

Wyatt v. Cole, 112 S.Ct. 1827, 118 L. Ed. 504.....i, 16, 29

STATE CASES

Cobb v. Cobb, 116 WLR (Super. Ct. 1998).....13

Fleming v. District of Columbia, 633 A.2d 846, 849 (D.C. 1993).....11, 26

Johnson v. Fairfax Village Condo. IV 641 A.2d 495, 503 (D.C.App. 1994).....19, 28

Hinton v. Metropolitan Police Department, 726 F. Supp. 875 (D.D.C. 1998).....19, 28

Kenneth W. Johnson v. District of Columbia, 04-CV-115 & 04-CV-442.....1, 16, 17, 20, 21, 26, 30

Lynch v. Meridian Hill Studio Apts., Inc., App. D.C., 491 A.515 (1985).....12

Montgomery v. Jimmy's Tire & Auto Ctr., App. D.C., 566 A.2d 1025 (1989).....22-23

Olivarious v. Stanley J. Sarnoff Endowment for Cardiovascular Science., 858 A.2d 457, 464 (D.C. 2004).....9, 10, 11, 25, 26

Partnership Placements, Inc., v. Landmark Ins. Co., 772 A.2d 837, 844 (D.C. 1998) (citations omitted).....10, 21, 30

Starling v. Jephunneh Lawrence & Assocs., App.D.C., 495 A.2d 1157 (1985).....13

Threat v. Winston, No. 04-CV-191, 2006 D.C. App. LEXIS 511, at *13-14 (D.C. September 21, 2006).....10, 25

Wallace v. Warehouse Employees Union #730, 482 A.2d 801, 810 (D.C. 1984).....11

Watkins v. Carty's Automotive Elec. Ctr., Inc., App. D.C., 632 A.2d 109 (1993).....13

FEDERAL STATUTES

14TH Amendment to the U.S. Constitution.....2, 16

TITLE 42 U.S.C. § 1983.....2, 29

TITLE 28 U.S.C. § 1257(a) and (b).....2

STATE STATUTES

TITLE 12 District of Columbia Code § 309...i, 3, 8, 10, 12, 13, 14, 29

OTHER AUTHORITIES

Doctrine of collateral estoppel.....7, 19, 28

Doctrine of res judicata.....7, 8, 10, 19, 28

Doctrine of naming a sui juris entity.....7, 10, 19

Federal Rule of Civil Procedure 60(b).....5, 8, 23

Moore's Federal Practice and Procedure ¶ 60.33.....21

7 Moore's Federal Practice at 60-358-59.....22

Superior Court Rule: Introductory Note.....3-4, 8

Superior Court Rule of Civil Procedure 60(b)....4, 8, 9, 10, 11, 12, 13, 25, 26, 29

Final saving clause of Rule 60(b) added in 1948 to Federal Rule of Civil Procedure 60(b) and stated in Superior Court Rule of Civil Procedure 60(b), which is identical or nearly so to the Federal Rule 8

LEXIS references.....22

WRIGHT-MILLER-KANE, *FEDERAL PRACTICE AND PROCEDURE*.....24, 27

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS:

The November 21, 2006 **ORDER** of the District of Columbia Court of Appeals ***denying rehearing en banc*** is reformatted and reproduced in the Appendix to Petition for Writ of Certiorari (hereinafter "Pet. App.") at 1A.

The September 28, 2006 **MEMORANDUM OPINION AND JUDGMENT** of the District of Columbia Court of Appeals is reformatted, and reproduced in the Appendix to the Petition at [Pet. App. at 2A].

The March 24, 2004 **ORDER** of the Superior Court of the District of Columbia is reformatted and reproduced at [Pet. App. at 6A].

The January 12, 2004 **ORDER AND OPINION** of the Superior Court of the District of Columbia is reformatted and reproduced at [Pet. App. at 7A].

The July 15, 1998 **ORDER** of the Superior Court of the District of Columbia is reformatted and reproduced at [Pet. App. at 11A]; it states: "Upon consideration of defendant District of Columbia's motion to dismiss plaintiff's complaint, the record herein, it is ORDERED, that the defendant's motion is GRANTED."

The Orders and Opinions of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia in *Kenneth Johnson vs. Marrion Barry et al.* are not reported to the best of Kenneth Johnson's knowledge, information and belief.

JURISDICTIONAL STATEMENT

The District of Columbia Court of Appeals, the state court of last resort for the District of Columbia, denied the petitioner's timely petition for rehearing ***en banc*** on November 21, 2006, which, in turn, starts the running of the time for filing this Petition for Writ of Certiorari. This Court has jurisdiction under 28 U.S.C. § 1257(a) and (b)

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE, SET OUT VERBATIM WITH APPROPRIATE CITATION:

The 14th Amendment to the United States Constitution provides:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [Pet. App. at 55A]

TITLE 42 U.S.C. § 1983:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

> Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia." [Pet. App. at 53A]

D.C. Code TITLE 12 § 309:

> "An action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is sufficient notice under this section." [Pet. App. at 56A]

Superior Court Rules: Introductory Note

> "One of the primary objectives in drafting and adoption of the following Superior Court Rules of Civil Procedure has been to provide an integral and convenient rules structure modeled closely on that of the Federal Rules of Civil Procedure. Thus, the practitioner should understand that these Civil Rules are of three kinds:

(1) Rules 1-86 hereof are derived directly from the correspondingly numbered Federal Rules and are in many cases identical thereto." [Pet. App. at 48A]

Superior Court Rules – Civil (SCR-Civil) Rule 60(b):

"(b) Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party of a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1)mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. **This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.**" Writs of coram nobis, coram nobis and audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the

procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action.

Comment

Identical to Federal Rule of Civil Procedure 60 except for deletion from section (b) of the inapplicable reference to 28 U.S.C. § 1655 dealing with lien actions in the United States District Courts." [Pet. App. at 49A]

Federal Rules of Civil Procedure Rule 60(b):

"(b) Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party of a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1)mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. **This Rule does not limit the**

power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, **or to set aside a judgment for fraud upon the court.**" Writs of coram nobis, coram nobis and audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action. [Pet. App. at 51A]

STATEMENT OF THE CASE

In the District of Columbia Court of Appeals, Kenneth Johnson contended that the District of Columbia's attorney, James A. DeVita, an officer of the court, made the false representation to the Superior Court that ***two complaints were identical*** that in fact were not identical in order to satisfy the elements of res judicata and collateral estoppel requiring the parties, cause of action, and events, transactions, and time of the offense to all be identical, or in the case of collateral estoppel for the issue to be identical. The District of Columbia's attorney James A. DeVita argued ex parte 1) that the two Complaints were identical, and 2) that Judge Zinora Rankin had already heard the [i]dentical Complaint and had dismissed it with prejudice, thus, precluding Judge Wendell P. Gardner from hearing the Complaint again. The problem is the Complaint in the first suit or the parties in the first suit were not identical to those in the second suit, but the District's lawyer James A. DeVita lied and said the two Complaints were identical when in fact they were not identical solely for satisfying the elements of res judicata and collateral estoppel. The District of Columbia's attorney, James A. DeVita, in fact obtained the judgment he sought from Superior Court Judge Wendell P. Gardner.

The District of Columbia Court of Appeals stated in its September 28, 2006 Judgment and Memorandum Opinion:

> "Appellant contends that the District, in moving to dismiss his 1998 suit, made three misstatements amounting to fraud on the court: one, that he had sued only the MPD, which is not *sui juris*, when in fact he also sued the Mayor and the District of Columbia generally; two, that an earlier complaint he had filed in Superior Court, also dismissed,

> barred the present suit on *res judicata* grounds; and three, that his suit was barred for failure to give the District prior notice under D.C. Code § 12-309, when (he alleged) he raised federal civil rights claims to which that statute does not apply."

—District of Columbia Court of Appeals,
"MEMORANDUM OPINION AND JUDGMENT",
September 28, 2006 [Pet. App. at 3A, ¶ 3].

This case concerns primarily a conflict between the decisions of the Supreme Court of the United States on the issue of "fraud upon the court" and the decisions of the District of Columbia Court of Appeals on the issue of "fraud upon the court". The Petitioner, Kenneth W. Johnson, filed his motion to vacate prior judgment in the Superior Court of the District of Columbia pursuant to the final saving clause of Rule 60(b) added in 1948, which provides:

> "This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for "fraud upon the court."

The Superior Court Rules 1 – 86 are identical to and are derived directly from the Federal Rules of Civil Procedure. Likewise, when the final saving clause was added to the Federal Rules of Civil Procedure Rule 60(b) it was likewise added to Superior Court Rules of Civil Procedure 60(b).

SUPREME COURT RULE 14 (I): The question of "fraud upon the court" was first raised on Johnson's motion to vacate prior judgment filed in the Superior Court for the District of Columbia on October 24, 2003; Johnson appealed from the denial of his motion to vacate prior judgment on the [b]asis of "fraud upon the court" filed

pursuant to the final saving clause of Rule 60(b), and the question of "fraud upon the court" was then raised again on appeal in the June 3 2005 "Amended Brief for Appellant" pursuant to an Order granting Johnson leave to file an Amended Brief.. The way in which the District of Columbia Court of Appeals passed on the question is as follows:

PERCURIAM: These appeals are from the denial of appellant's motion under Super. Ct. Civ. R. 60(b) filed over five years after his case had been dismissed, and from the denial of his successive motions to reconsider the denial of the Rule 60(b) motion. The crux of appellant's argument, aside from his numerous assertions regarding the merits of the underlying action, [1] is that the District of Columbia committed ***fraud upon the court*** by making a number of allegedly fraudulent statements in its June 1998 motion to dismiss his complaint. The trial court found no merit to the claims of fraud, and neither do we. We accordingly affirm.

Rule 60 (b) allows fraud to be asserted as a basis for relief from a judgment in two ways: by motion under Rule 60(b)(3) asserting fraud or other misconduct of an adverse party; and by "an independent action... to set aside a judgment for ***fraud upon the court***." A motion under Rule 60(b), however, must be made no more than one year after the judgment. *See* Rule 60(b); *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Science, Inc.*,858 A.2d 457, 464 (D.C. 2004). Appellant's belated motion plainly does not qualify for relief under that provision. Nor, as will appear, does it meet the substantive requirements for

---

[1] Appellant sued the Metropolitan Police Department (MPD) — and arguably the District of Columbia — in May 1998 alleging false arrest or malicious prosecution. The Superior Court dismissed the suit without stating reasons, and appellant took no appeal from the dismissal.

an independent action for fraud — assuming, solely for the sake of argument, that it was filed "within a reasonable time" after the 1998 dismissal, as Rule 60(b) demands for such an action.

Appellant contends that the District, in moving to dismiss his 1998 suit, made three misstatements amounting to fraud on the court: one, that he had sued only the MPD, which is not *sui juris*, when in fact he also sued the Mayor and the District of Columbia generally; two, that an earlier complaint he had filed in Superior Court, also dismissed, barred the present suit on *res judicata* grounds; and three, that his suit was barred for failure to give the District prior notice under D.C. Code § 12-309, when (he alleged) he raised federal civil rights claims to which that statute does not apply. Our decisions make clear, however, that none of these assertions make out a claim of fraud upon the court sufficient to meet the requirements of an independent action.

The concept of fraud upon the court, we have said, "should be narrowly construed and 'confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by attorney, in which the integrity of the court and its ability to function impartially is directly impinged.'" *Partnership Placements, Inc.*, v. Landmark Ins. Co., 722 A.2d 837, 844 (D.C. 1998) (citation omitted). Moreover, "[f]raud on the court... is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. The concept refers only to very unusual cases involving far more than an injury to a single litigant." *Olivarius,* 858 A.2d at 465 (internal quotation marks and citation omitted). Finally, we have held that an independent action under Rule 60(b) is an equitable one of last resort carrying with it stringent requirements. *See, e.g. Threat v. Winston,* No. 04-CV-191, 2006 D.C. App. LEXIS

511, at *13-14 (D.C. September 21, 2006). Relief in equity is available "only to prevent a grave miscarriage of justice" and "equitable relief will not be granted where the plaintiff has a complete and adequate remedy at law." *Id.* at *16 (internal quotation marks and citations omitted). "[I]f a Rule 60(b) motion is available, there is an adequate remedy and the independent action may be dismissed." *Id.* (internal quotation marks and citation omitted).

Appellant's claims of fraud fall well short of meeting these standards. He alleged no bribery or improper influence exerted on the court, and at most claimed that the District had made questionable legal arguments or misstatements about his complaint — matters that did not "involv[e] more than an injury to a single litigant" and certainly did not portend "a grave miscarriage of justice" (indeed, the adversary process is designed to allow for correction of such statements by an opposing litigant). Moreover, Rule 60(b)(3) furnished appellant with an "adequate remedy of law", one he failed to pursue within the time permitted. Lastly, as the District points out, appellant never opposed its 1998 motion to dismiss, nor took an appeal from the dismissal, thus foreclosing his claims under the principle that "an independent action for fraud may not be entertained if there was an opportunity to have the ground now relied upon to set aside the judgment fully litigated in the original action." *Olivarius,* 858 A.2d at 468 (internal quotation marks and citation omitted); *see also Fleming v. District of Columbia*, 633 A.2d 846, 849 (D.C. 1993).[2]

Affirmed.

---

[2] Because appellant's arguments in support of his motions to reconsider are the same as those made in his Rule 60(b) motion, the trial court did not abuse its discretion in denying those motions. *See, e.g., Wallace v. Warehouse Employees* Union #730, 482 A.2d 801, 810 (D.C. 1984).

ENTERED BY DIRECTION
OF THE COURT:
"s/Garland Pinkston, Jr"

GARLAND PINKSTON, JR
Clerk of the Court

September 28, 2006

The way in which the Superior Court of the District of Columbia passed on the question is as follows:

This matter is before the court on plaintiff's motion to vacate prior judgment and request for oral argument on such motion. Upon consideration of the motion, District of Columbia's opposition, plaintiff's follow-up request, and the record herein, both of plaintiff's motions are, this 12th of January 2004, hereby **DENIED**.

Plaintiff first filed suit against the District of Columbia, the Metropolitan Police Department, and its officers in May of 1998, claiming that defendants had maliciously prosecuted him in criminal court. On July 15, 1998, the court dismissed the lawsuit for plaintiff's failure to comply with the mandatory notice requirements, as stipulated in D.C. Code § 12-309. Plaintiff now moves this court to vacate the judgment under Superior Court Civil Procedure Rule 60(b) on grounds that defendant District had defrauded the court in its opposition to plaintiff's earlier motion.

Although Rule 60(b) permits the vacating of a judgment when so warranted, it was specifically designed to safeguard the finality of judgments; therefore, only in exceptional circumstances will the court grant post-judgment relief. *Lynch v. Meridian Hill Studio Apts., Inc.*, App. D.C., 491 A.515 (1985). The court, moreover, has broad discretion with which to decide a motion to vacate a

default judgment. See *Watkins v. Carty's Automotive Elec. Ctr., Inc.*, App. D.C., 632 A.2d 109 (1993).

Where, as here, the plaintiff asks the court to vacate judgment due to fraud, he must show the following elements with respect to defendants' behavior: (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action taken in reliance upon the representation. Cobb v. Cobb, 116 WLR 1993 (Super. Ct. 1988). Assuming the plaintiff proves all five of the above elements, the court may then set aside the earlier decree, even if the present case was filed well after the general year-long limitation. Yet it is only in "unusual and extraordinary" or egregious circumstances, which justify overriding the policy of finality, that the court will reverse judgment. See *Starling v. Jephunneh Lawrence & Assocs.*, App.D.C., 495 A.2d 1157 (1985). In such instances, the court will vacate the improper judgment so long as the plaintiff has filed his Rule 60 motion within a reasonable amount of time –"reasonable", here, being defined according to the facts of the case.

In this case, plaintiff alleges that defendant District of Columbia, and its agents, has committed fraud upon the court by making false representations. Plaintiff, however, offers no proof to substantiate this claim. Further, he offers no solid argument showing that he should have been granted judgment the first time around. As the District points out, the plaintiff failed to meet the statutory requirements of D.C. Code § 12-309, in that he neglected to properly notify the mayor of his suit. Notwithstanding the dismissal based on this statutory preclusion, plaintiff thereafter filed a similar suit in District Court. This too was dismissed, although its cause was failure to file within the proper statute of limitations.

In its opposition to plaintiff's Rule 60 motion to set aside the judgment, defendant states that the motion, having been filed much longer than a year after judgment, is out of

time and, for that reason alone, should be denied. True, in most instances the court will observe a one-year time limit by which parties must file their motions to reverse judgment. But, as noted above, that rule is not hard-lined, and under extenuating circumstances the court will waive this otherwise enforced deadline. Here, though, plaintiff has not shown that the District has committed any fraud whatsoever and, so, regardless of any time limitation he is not entitled to the requested relief. [3]

It is so **ORDERED.**

"s/Michael L. Rankin"
MICHAEL L. RANKIN
Judge
(Signed in Chambers)

January 12, 2004

On July 15, 1998, the Superior Court of the District of Columbia held:

Upon consideration of defendant District of Columbia's unopposed motion to dismiss plaintiff's complaint, the record herein, it is ORDERED, that the defendant's motion is GRANTED, this 15th day of July 1998.

"s/Wendell P. Gardner"
WENDELL P. GARDNER
Judge

July 15, 1998

---

[3] In his motion, plaintiff claims that he had, in keeping with 12-309 statutory requirements, notified the Mayor of his suit by naming him in the complaint. Yet, as the law stipulates, mere mention of the Mayor's name does not satisfy the statutory obligation; rather, submission of a letter does.

DIRECT ARGUMENT AND CONCISE ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

ARGUMENT A.

FIRST REASON: the District of Columbia Court of Appeals, the state court of last resort for the District of Columbia, has decided an important federal question in a way that conflicts with the decisions of the Supreme Court of the United States in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 246** (1944) on the issue of "fraud upon the court" where federally guaranteed civil rights are concerned.

SECOND REASON: the District of Columbia Court of Appeals, the state court of last resort for the District of Columbia, has decided an important federal question in a way that conflicts with the decisions of a United States court of appeals in *Demjanjuk v. Petrovosky* 10 F.3d 338 at **348**, or *Lockwood v. Bowles*, **D.C.D.C.** 1969, 46 F.R.D. 625, 634; *Serzysko v. Chase Manhattan Bank*, **C.A.2d**, 1972, 461 F.2d 699, certiorari denied 93 S.Ct. 173, 409 U.S. 883, 34 L.Ed.2d 139; *Wilkin v. Sunbeam Corp.*, **C.A. 10th**, 1968, 405 F.2d 165; *Dausel v. Dausel*, **C.A.D.C.**1952, 195 F.2d 774; *Valerio v. Boise Cascade Corp.*, D.C. Cal. 1978, 80 F.R.D. 626, 640, citing Wright & Miller, affirmed **C.A. 9th**, 1981, 645 F.2d 669, certiori denied 102 S.Ct. 976, 454 U.S. 1126, 71 L.Ed.2d 113 on the issue of "fraud upon the court" where federally guaranteed civil rights are concerned.

THIRD REASON: Consideration by the Supreme Court of the United States is necessary to secure and maintain uniformity with the Supreme Court's decisions on the issue of "fraud upon the court" where federally guaranteed civil rights are concerned.

Kenneth W. Johnson was arrested, jailed, and prosecuted for operating his business without probable cause; his business was forcibly closed down, all his income from his business was stopped, his business was irrevocably ruined as the result of the policies of the District of Columbia that were affected upon Johnson by the District's police officers: The main proposition advanced by Kenneth Johnson in the Complaint in *Kenneth W. Johnson v. Marrion Barry Jr. Mayor of the District of Columbia*, Civil Action 3837-98 is that his enjoyment upon the terms of equality with all others in similar circumstances of the privilege of owning and operating a business, pursuing an ordinary calling or trade, and of acquiring, holding and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment *Powel v. Pennsylvania*, 127 U.S. 678, 684, and that Johnson was deprived of these federal rights by the District of Columbia and its police officers *Wyatt v. Cole*, 112 S.Ct. 1827, 118 L. Ed. 504.

On May 21, 1998, Kenneth W. Johnson filed a Complaint for Damages in the Superior Court alleging:

"Nevertheless, I believe it says in the 14th amendment that all U.S. citizens are entitled by right to the right of free enterprise ….. have the right under the U.S. Constitution to free enterprise and to own and operate a business. I will make it a point in the near future to obtain a copy of the 14th Amendment and read it thoroughly so that I maybe able to speak on this subject with more precisiveness and will have a clearer focused understanding of this rights as set forth…. Without a doubt I feel my civil rights were violated." [Pet.App. at 21A].

On July 15, 1998, The Superior Court of the District of Columbia granted the District of Columbia's Summary Judgment and dismissed the Plaintiff's Complaint, and did

so "upon consideration of the District of Columbia's motion to Dismiss Plaintiff's Complaint", [Pet. App. at 10A]. The Districts motion was signed by attorney James A. DeVita as the author of the Motion and Memorandum which supported it and was filed with it; the Memorandum is the very document which contains the false statements to the court that were relied upon by the court in granting the District of Columbia's motion [Pet. App. at 33A-34A].

ARGUMENT B.

The District of Columbia Court of Appeals refused to exercise the historic power of equity to set aside fraudulently begotten judgments.

> "Appellant's claims of fraud fall well short of meeting these standards. He alleged no bribery or improper influence exerted on the court, ***and at most claimed that the District had made questionable legal arguments or misstatements about his complaint*** — matters that did not "involve[e]... more than an injury **to a single litigant**" and certainly did not portend "a grave miscarriage of justice"

—District of Columbia Court of Appeals, *Kenneth W. Johnson v. District of Columbia, 04-CV-115 & 04-CV-442, Memorandum Opinion and Judgment* (September 28, 2006) [Pet. App. at 4A, ¶4]. **(emphasis added)**

The United States Supreme Court held in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 245** (1944): "Every element of fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments." [Pet. App. at 72A] In direct conflict with this holding, The District of Columbia Court of Appeals acknowledges that false

statements, which it refers to as "misstatements" about Johnson's Complaint, were made by the District of Columbia (it's attorney James A. DeVita) to the Superior Court of the District of Columbia in order to procure a judgment against Johnson and for the District of Columbia from on July 15, 1998 [Pet. App. at 9A]. And, after acknowledging that false statements, which it refers to as "misstatements" about Johnson's Complaint, it then in effect [r]efused to "exercise the historic power of equity to set aside fraudulently begotten judgments" in [d]irect conflict with the relevant decisions of the United States Supreme court in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 245** (1944).

Similar to *Hazel-Atlas* Id. supra, several United States Courts of Appeals have confronted the issue of whether or not to vacate a fraudulently begotten judgment. In *Demjanjuk v. Petrovosky* 10 F.3d 338 at 348 (6th Cir 1993), the United States Court of Appeals for the 6th Circuit confronted [t]he issue of whether or not to vacate a fraudulently begotten judgment and vacate the judgment. In *Demjanjuk* Id. supra, the United States Court of Appeals stated [Pet. App. at 106A]:

> "The master stated, correctly we believe, that it would be error "to exclude from the definition of fraud on the court, intentional, fraudulent nondisclosure during discovery. S.M. Report at 187-88.
>
> **[2]** The Special Master set forth the elements of fraud upon the court as consisting of conduct:
>
> 1. On the part of an officer of the court;
> 2. That is directed to the "judicial machinery" itself;
> 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;

4. That is a positive averment or is concealment when one is under a duty to disclose;
5. That deceives the court.

As shown by his description of the third element, and repeated in his opinion, the master held that the intent requirement "is satisfied by proof of actual intent to defraud, of willful blindness to the truth, or of a *reckless disregard for the truth.* S.M. Report at 185-86, 190 (emphasis added)."

Certainly, the District of Columbia's attorney James A. Devita's statements to the Superior Court:

"***Since the instant complaint is virtually identical to the complaint*** which was dismissed with prejudice in Johnson v. O'Boyle, C.A. 98-3875, plaintiff's claim in this case is barred by the doctrine of issue preclusion, collateral estoppel and res judicata. Johnson v. Fairfax Village Condo. IV 641 A.2d 495, 503 (D.C.App. 1994)" (emphasis added)

"Plaintiff's complaint must be dismissed, or, in the alternative, summary judgment must be entered in favor of defendant **because plaintiff has not [n]amed a sui juris entity as a defendant**. *Hinton v. Metropolitan Police Department*, 726 F. Supp. 875 (D.D.C. 1998)." (emphasis added)

"The only defendant that plaintiff has named in the instant case is the Metropolitan Police Department."

Qualify as intentionally false, willfully blind to the truth, or is in reckless disregard for the truth.

See James A. DeVita's, "*Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss, or, in the Alternative, for Summary Judgment* (June 22, 1998) [Pet. App. at 34A].

In the District of Columbia Court of Appeals September 28th 2006 "MEMORANDUM OPINION JUDGMENT, it states:

> "Appellant's claims of fraud at most claimed that the District had made .... ***misstatements about his complaint*** (indeed, the adversary process is designed to allow for ***correction of such statements*** by an opposing litigant)"

—[Pet. App. at 4A] *Kenneth W. Johnson v. District of Columbia*, 04-CV-115 & 04-CV-442, Memorandum Opinion and Judgment, District of Columbia Court of Appeals (September 28, 2006). **(emphasis added)**

Here again the District of Columbia Court of Appeals acknowledges the false representations, which it refers to as [in]correct statements or misstatements about Johnson's Complaint, were made to the Superior Court, yet it refuses to exercise the historic power of equity to set aside fraudulently begotten judgments. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 245** (1944), and *Demjanjuk v. Petrovosky* 10 F.3d 338 at 348 (6th Cir 1993)

Neither *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 245** (1944), nor *Demjanjuk v. Petrovosky* 10 F.3d 338 at 348 (6th Cir 1993) had anything to do with the bribery of a judge or juror, yet the District of Columbia Court of Appeals has held:

> "The concept of fraud upon the court, we have said, "should be narrowly construed and 'confined to the

> most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged.'" *Partnership Placements, Inc., v. Landmark Ins. Co., 722 A. 2d 837, *44 (D.C. 1998)(citation omitted).*"

— District of Columbia Court of Appeals, *Kenneth W. Johnson v. District of Columbia, 04-CV-115 & 04-CV-442, Memorandum Opinion and Judgment*, (September 28, 2006). [Pet. App. at 4A]

In *Demjanjuk v. Petrovosky* 10 F.3d 338 at 352 (6th Cir 1993) [Pet.App. at 115A-116A], the United States Court of Appeals for the 6th Circuit explained:

> "Moore's Federal Practice and Procedure ¶ 60.33. Cases dealing with fraud on the court often turn on whether the improper actions are those of parties alone, or if the attorneys in the case are involved. As an officer of the court, every attorney has a duty to be completely honest in conducting litigation. Professor Moore emphasizes this element of fraud in his treaties:
>
> > [W]hile an attorney should represent his client with singular loyalty, that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates fraud upon a court.
>
> Id. The author cities two Supreme Court decisions that illustrate the role of attorney actions in the

> fraud on the court analysis. Moore distinguishes between *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1994), in which the Supreme Court did find fraud, and *U.S. v. Throckmorton*, 98 U.S. 61, 25 L.Ed. 93 (1878), in which the Court did not find fraud. While the actions taken in both cases were similar—**false documents were put before the court**—the attorney was implicated in *Hazel-Atlas* as one of the perpetrators, while the attorney in Throckmorton was not. 7 Moore's Federal Practice at 60-358-59. See also *Serysko v. Chase Manhattan Bank*, 461 F.2d 699 (2d Cir. 1972), where the court of appeals as part of its finding of no fraud on the court, pointed out that none of the offending party's attorneys were involved in the alleged fraud. 461 F.2d at 702 n.1"

It is patently clear that the holdings of the District of Columbia Court of Appeals on the issue of fraud upon the court are in [d]irect [c]onflict with the relevant decisions in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 245** (1944), or *Demjanjuk v. Petrovosky* 10 F.3d 338 at 348 (6th Cir 1993). Print outs of the text of these two cases from LEXIS are provided in the Appendix: *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 245** (1944) at [Pet. App. at 57A-78A], and *Demjanjuk v. Petrovosky* 10 F.3d 338 at 348 (6th Cir 1993) [Pet. App. at 79A-116A].

> "When a local rule and a federal rule are identical, or nearly so, the Court of Appeals construes the local rule in a manner consistent with the federal rule to the extent possible under binding precedent, and looks to federal court decisions interpreting the federal rules as persuasive authority in interpreting the local rule."

—*Montgomery v. Jimmy's Tire & Auto Ctr., Inc.*, App. D.C., 566 A.2d 1025. Superior Court Rule of Civil Procedure 60(b) and Federal Rule of Civil Procedure 60(b) are identical; see the proof in [Pet. App. at 48A-52A].

The District of Columbia Court of Appeals is wrong on the issue of vacating a judgment on the basis of fraud upon the court being limited by a one year time limitation. The United States Supreme Court has acknowledged that "fraud upon the court" is not limited by a one year time limitation: Held in *Hazel-Atlas* Id. infra that a judgment procured in 1932, when petitioner filed for it to be vacated ***9 years later*** in 1941, must be vacated.

> "Since the judgments of 1932 therefore must be vacated, the case now stands in the same position as though Hartford's corruption had been exposed at the original trial."

—[Pet. App. at 77A-78A], *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 250** (1944)

Various United States Courts of Appeals and U.S. District Courts have acknowledged that "fraud upon the court" is not limited by a one year time limitation:

> "The only instance in which Rule 60(b) allows for **the reopening of lawsuits *regardless of the passage of time*** is when there is an **allegation of fraud upon the court**, for the law favors **discovery and correction of corruption** of the judicial process even more than it requires an end to lawsuits." *Lockwood v. Bowles*, **D.C.D.C.** 1969, 46 F.R.D. 625, 634. See also *Serzysko v. Chase Manhattan Bank*, **C.A.2d**, 1972, 461 F.2d 699, certiorari denied 93 S.Ct. 173,

> 409 U.S. 883, 34 L.Ed.2d 139; *Wilkin v. Sunbeam Corp.*, **C.A. 10th** , 1968, 405 F.2d 165. *Dausel v. Dausel*, **C.A.D.C.**1952, 195 F.2d 774; *Valerio v. Boise Cascade Corp.*, D.C. Cal. 1978, 80 F.R.D. 626, 640, citing Wright & Miller, affirmed **C.A. 9th**, 1981, 645 F.2d 669, certiori denied 102 S.Ct. 976, 454 U.S. 1126, 71 L.Ed.2d 113."

—WRIGHT-MILLER-KANE, *FEDERAL PRACTICE AND PROCEDURE* § 2870 AT PAGE 412

"a decision produced by fraud on the court is not in essence a decision at all and ***never becomes final***" *Kenner v. Commissioner of Internal Revenue,* **C.A. 7th** 1968, 387 F.2d 689, 691, certiorari denied 89 S.Ct. 121, 393 U.S. 841, 21 L.Ed.2d 112. WRIGHT-MILLER-KANE AT 409

If the District of Columbia Court of Appeals was correct in its logic that a one year time limitation limits vacating a judgment that was begotten by fraud, there would not be a case where the United States Supreme Court has order a judgment vacated for fraud upon the court, where the judgment was entered in **1932**, the petition to vacate the judgment was filed ***9 years later*** in **1941**, and the judgment was in fact vacated by the United States Supreme Court in **1944**, as was the case in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 246 (1944)** (emphasis added). Likewise, there would not be holdings by other court's such as those noted on the above pages.

> "We cannot easily understand how, under the admitted facts, Hazel should have been expected to do more than it did to uncover the fraud. ***But even if Hazel did not exercise the highest degree of diligence***, **Hartford's fraud cannot be condoned** for that reason alone."

— *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 246** (1944). [Pet. App. at 72A]

In [d]irect [c]onflict with the relevant decisions of the United States Supreme Court, United States courts of appeals, and U.S. District Courts cited in this writ, the District of Columbia Court of Appeals has manufactured various means of imposing a one year time limitation on Johnson's motion for vacating a fraudulent begotten judgment:

> "Rule 60(b) allows fraud to be asserted as a basis for relief from a judgment in two ways: by motion under Rule 60(b)(3) asserting fraud or other misconduct of an adverse party; and by "an independent action.... to set aside a judgment for fraud upon the court." A motion under Rule 60 (b)(3), however, **must be made no more than *one year* after the judgment**. *See* Rule 60(b); *Olivarious v. Stanley J. Sarnoff Endowment for Cardiovascular Science.*, 858 A.2d 457, 464 (D.C. 2004). **Appellant's *belated* motion** plainly does not qualify for relief under that provision. Nor, as will appear, does it meet the substantive requirements for an independent action for fraud — assuming, solely for the sake of argument, that it was filed "within a reasonable time" after the 1998 dismissal, as Rule 60(b) demands for such an action..... Finally, we have held that an independent action under Rule 60(b) is an equitable one of last resort carrying with it stringent requirements. *See, e.g., Threatt v. Winston*, No. 04-CV-191, 2006 D.C.App. LEXIS 511, at *13-14 (D.C. September 21, 2006). Relief in equity is available "only to prevent a grave miscarriage of justice" and "equitable relief will not be granted where the plaintiff has a complete and adequate remedy at law." *Id.* (internal quotation

> marks and citation omitted). "[I]f a Rule 60(b) motion is available, there is an adequate remedy and the independent action may be dismissed." *Id.* (internal quotation marks and citation omitted)..... Moreover, Rule 60(b)(3) furnished appellant with an "adequate remedy of law," one he failed to purse within the time permitted. Lastly, as the District points out, appellant never opposed its 1998 motion to dismiss, nor took an appeal from the dismissal, thus foreclosing his claims under the principle that "an independent action for fraud may not be entertained if there was an opportunity to have the ground now relied upon to set aside the judgment fully litigated in the original action." *Olivarius,* 858 A.2d at 468 (internal quotation marks and citations omitted); *see also Fleming v. District of Columbia*, 633 A.2d 846, 849 (D.C. 1993)."

—District of Columbia Court of Appeals, *Kenneth W. Johnson v. District of Columbia, 04-CV-115 & 04-CV-442, Memorandum Opinion and Judgment*, (September. 28, 2006) [Pet. App. at 2A-4A]

All of the afore quoted language of the District of Columbia Court of Appeals is in direct conflict with the holdings of the United States Supreme Court, United States courts of appeals and United States District Court on the time limitations issue for vacating fraudulent begotten judgments [Pet. App. at 77A-78A]:

> "Since the judgments of 1932 therefore must be vacated, the case now stands in the same position as though Hartford's corruption had been exposed at the original trial."

The United States Supreme Court held in *Hazel-Atlas* Id. that a judgment procured in 1932, and petitioner filed for it to be vacated ***9 years later*** in 1941 must be vacated. SEE — *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 246** (1944). [Pet. App. at 77A-78A]

The Superior Court relied on the District of Columbia's Motion to Dismiss Plaintiff's Complaint, and the "*Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss, or, in the Alternative, for Summary Judgment* (June 22, 1998) [Pet. App. at 34A]. The Superior Court's July 15, 1998 Order states:

> "Upon consideration of defendant District of Columbia's unopposed motion to dismiss plaintiff's complaint, the record herein, it is ORDERED, that the defendant's motion is GRANTED, this 15th day of July 1998."
>
> "s/Wendell P. Gardner"
>
> WENDELL P. GARDNER
> Judge

The United States Supreme Court stated in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, **at 246** (1944) [Pet. App. at 73A]:

> "The Circuit Court also rested denial of relief upon the conclusion that the Clarke article was not "basic" to the Court's 1932 decision. Whether or not it was the primary basis for that ruling, the article did impress the Court, ***as shown by the Court's opinion***. Doubtless it is wholly impossible accurately to appraise the influence that the article exerted on the judges. But we do not think the circumstances call for such an attempted appraisal."

The District of Columbia's Motion to Dismiss Plaintiff's Complaint and Memorandum in support of the Motion to Dismiss were "basic" to the Superior Court's July 15, 1998 Judgment against Kenneth Johnson and for the District of Columbia. Whether or not it was the primary basis for that ruling, the Motion and Memorandum did impress the Superior Court, as shown by the Court's language on the face of the July 15, 1998 Order:

> "Upon ***consideration*** of defendant District of Columbia's motion to dismiss plaintiff's complaint, the record herein, it is ORDERED, that the defendant's motion is GRANTED."

Johnson argues that it is clear that the District of Columbia's motion to dismiss plaintiff's complaint and Memorandum were "basic" to the Superior Court's July 15, 1998 decision. The false statement were contained in the *Memorandum*. Certainly, the District of Columbia's attorney James A. Devita's statements to the Superior Court:

> "***Since the instant complaint is virtually identical to the complaint*** which was dismissed with prejudice in Johnson v. O'Boyle, C.A. 98-3875, plaintiff's claim in this case is barred by the doctrine of issue preclusion, collateral estoppel and res judicata. Johnson v. Fairfax Village Condo. IV 641 A.2d 495, 503 (D.C.App. 1994)" (emphasis added)

> "Plaintiff's complaint must be dismissed, or, in the alternative, summary judgment must be entered in favor of defendant **because plaintiff has not [n]amed a sui juris entity as a defendant**. *Hinton v. Metropolitan Police Department*, 726 F. Supp. 875 (D.D.C. 1998)." (emphasis added)

> "The only defendant that plaintiff has named in the instant case is the Metropolitan Police Department."

Qualify as intentionally false, willfully blind to the truth, or is in reckless disregard for the truth.

See James A. DeVita's, "*Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss, or, in the Alternative, for Summary Judgment* (June 22, 1998) [Pet. App. at 34A].

The En Banc decision of the United States Court of Appeals for the District of Columbia Circuit in *Brown v. United States*, 239 U.S.App.D.C. 345, 356-357 [Pet. App. at 142A] held: "We hold that appellant's noncompliance with 12 D.C. Code § 309 cannot bar his federal claims."

"The purpose of § 1983 is to deter state [District of Columbia] actors from using the badge of authority to deprive individuals of federally guaranteed rights and to compensate victims if such deterrents fails."—*Wyatts v. Cole,* 112 S.Ct. 1827, 118 L.Ed. 504 (1992).

ARGUMENT C.

Johnson has been unable to obtain a fair and impartial trial on his Rule 60(b) "fraud upon the court" motion.

> "Appellant's claims of fraud fall well short of meeting these standards. He alleged no bribery or improper influence exerted on the court, ***and at most claimed that the District had made questionable legal arguments or misstatements about his complaint*** — matters that did not "involve[e]... more than an injury **to a single litigant**" and certainly did not portend "a grave miscarriage of justice"

—District of Columbia Court of Appeals, *Kenneth W. Johnson v. District of Columbia, 04-CV-115 & 04-CV-442, Memorandum Opinion and Judgment* (September 28, 2006) [Pet. App. at 4A, ¶4].

> "The concept of fraud upon the court, we have said, "should be narrowly construed and '***confined to*** the most egregious cases, such as ***bribery of a judge or juror***, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged.'" *Partnership Placements, Inc., v. Landmark Ins. Co., 722 A. 2d 837, *44 (D.C. 1998)(citation omitted).*"

— District of Columbia Court of Appeals, *Kenneth W. Johnson v. District of Columbia, 04-CV-115 & 04-CV-442, Memorandum Opinion and Judgment*, (September 28, 2006). [Pet. App. at 4A]

Johnson asked for "Leave to file an Amended Complaint" pursuant to Rule 15(a) and (c) in the Rule 60(b) motion. *Foman v. Davis*, 371 U.S. 178, **182** states: "court abused its discretion in denying motion to amend complaint to assert right of recovery…. after dismissal of complaint". Johnson's request was ignored by the courts

CONCLUSION

For the reasons set forth herein, Johnson asks the U.S. Supreme Court to grant this Petition for Writ of Certiorari. See the extractions from the memorandum in support of Johnson's Rule 60(b) motion: [Pet. App. at 147A-152A] that was filed in the Superior Court of D.C..

Respectfully submitted

Kenneth W. Johnson,
9803 Allenford Circle, Apt. 203
North Potomac, Maryland 20850 Tel: (240) 314-7188